

DEPARTMENT OF TAXATION

Amendments to Chapter 18-237D
Hawaii Administrative Rules

October 29, 2004

SUMMARY

Chapter 18-237D, Hawaii Administrative Rules, is amended by

1. Adding a new section, §18-237D-1-02.
2. Renumbering §18-237D-1-02 to §18-237D-1-03.
3. Amending §18-237D-1-03(c).
4. Adding a new section, §18-237D-1-04.
5. Renumbering §18-237D-1-03 to §18-237D-1-05.
6. Renumbering §237D-1-04 to §18-237D-1-06.
7. Amending subsection §18-237D-1-06(b)
8. Renumbering section §18-237D-1-05 to §18-237D-1-07.
9. Amending §18-237D-1-07.
10. Amending §18-237D-2-01.
11. Amending §18-237D-3-01.
12. Amending §18-237D-4-01(a) to (c).
13. Amending §18-237D-4-01(d).
14. Amending §18-237D-4-02(a) and (b).
15. Amending §18-237D-4-03.
16. Amending §18-237D-4-04.
17. Amending §18-237D-6-01.
18. Amending §18-237D-6-02.

19. Amending §18-237D-7-01(a), (b) and (d).
20. Amending §18-237D-7-02(b) to (f).
21. Amending §18-237D-8-01.
22. Amending §18-237D-9-01.
21. Amending §18-237D-12-01(a).

§18-237D-1-02

§18-237D-1-02 "Fair market rental value" defined.

As used in this chapter, "fair market rental value" means an amount equal to one-half the gross daily maintenance fees that are paid by the owner, are attributable to the time share unit, and include maintenance costs, operational costs, insurance, repair costs, administrative costs, taxes, other than transient accommodations taxes, and other costs including payments required for reserves or sinking funds. The taxpayer shall use gross daily maintenance fees, unless the taxpayer proves or the director determines that the gross daily maintenance fees do not fairly represent fair market rental value taking into account comparable transient accommodation rentals or other appraisal methods.

Example 1. A, a time share interval owner, pays \$700 annually in maintenance fees for a time interval period of seven days. The daily fair market rental value is calculated as follows:

- (1) Divide the annual maintenance fees for the time interval period by seven days to obtain the gross daily maintenance fee ($\$700 \div 7 \text{ days} = \100).
- (2) Divide the gross daily maintenance fee by two to obtain one-half the gross daily maintenance fee ($\$100 \div 2 = \50).

To determine the total fair market rental value for the interval period, the daily fair market rental value is multiplied by seven (the number of days that the resort time share vacation unit is occupied by the time share interval owner or by some other person but not rented).

Example 2. Assume the same facts as in Example 1, except that A only occupied the resort time share vacation unit for five days. To determine the total fair market

rental value, the daily fair market rental value is multiplied by five days (the number of days that the unit was occupied).

Example 3. B, a time share interval owner, has a time interval period of fourteen days. B occupied the resort time share vacation unit for seven days and in violation of the rules of the time share vacation plan, rented the remaining seven-day period to someone else. The plan manager is liable for the transient accommodations tax on the daily fair market rental value of the unit for the fourteen days. B is not liable for the transient accommodations tax.

Example 4. C, a time share interval owner, has a time interval period of seven days. C was charged an additional amount by X for the rental of the unit for three additional days. Although C occupied the unit for ten days, the daily fair market rental value would be multiplied by seven days to obtain the total fair market rental value that is subject to the transient accommodations tax on time share occupancy. X is subject to the transient accommodations tax and the four per cent general excise tax on the gross rental income received from C for the three additional days. X may visibly pass on these taxes to C.

Example 5. D, a time share interval owner, has the right to use a two-bedroom, two-bath unit for seven days. D occupied the unit for the seven days; however, instead of using the whole unit, D decided to use only one bedroom and one bath. The rest of the unit (one bedroom and one bath) was "locked out" and D can bank this balance and use it another time. D will not be subject to the transient accommodations tax on the occupancy of the whole unit. The portion of the unit which was "locked-out" would not be included

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in the total fair market rental value subject to the transient accommodations tax on time share occupancy. This allocation may be based on the ratio of the square footage of the "locked out" portion to the total square footage of the whole unit.

[Eff JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-1)

§18-237D-1-03(c) Excluded from gross rental or gross rental proceeds. Excluded from gross rental or gross rental proceeds are the following:

- (1) General excise taxes which are visibly passed on to and collected from the consumer;
- (2) Transient accommodations taxes for transient accommodations furnished after June 30, 1990, which are visibly passed on to and collected from the consumer;
- (3) Charges for guest amenities, including meals, beverages, telephone calls, and laundry;
- (4) Service charges;
- (5) Forfeited deposits; and
- (6) Insurance proceeds received for business interruption losses.

Example 1. Ms. Landlord rents a condominium she owns to Mr. and Mrs. Tourist for \$500 for the month of July, 1999. There is a flat charge of \$500, and there are no separately stated charges for the general excise tax or the transient accommodations tax, on Ms. Landlord's billing to the Tourists. Ms. Landlord's general excise tax liability is four per cent of \$500, or \$20, and her transient accommodations tax liability is 7.25 per cent of \$500, or \$36.25.

Example 2. Paradise Hotel charges \$50 a day for rental of a hotel room as a transient accommodation. Mr. Tourist stays at the hotel for three nights beginning January 1, 1999. Hawaii, Inc. adds 7.25 per cent of the total room charge of \$150, or \$10.87, for transient accommodations tax, and four per cent of the \$150, or \$6, for general excise tax, as separate items on Mr. Tourist's bill. Mr. Tourist pays Hawaii, Inc. \$166.87 when he

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checks out. Because Paradise visibly passed on both taxes by separately stating them and charging \$166.87, both taxes are excluded from gross rental. The transient accommodations tax to be paid after January 1, 1999, is 7.25 per cent of \$150, or \$10.87.

Example 3. Paradise Hotel also rents a similar room to Ms. Mainland, a friend of Mr. Tourist, in January 1999. In addition to her room charges of \$150, Ms. Mainland incurs charges of \$100 for food, \$75 for beverages, \$10 for telephone calls, and \$15 for laundry. All charges total \$350. Paradise computes its transient accommodations tax by applying the 7.25 per cent rate only upon the room charges of \$150. Paradise's transient accommodations tax, therefore, is \$10.87.

If Paradise visibly passes on and collects the \$10.87 from Ms. Mainland and charges \$160.87 for the room, the transient accommodations tax to be paid to the Hawaii State Tax Collector is 7.25 per cent of \$150, or \$10.87.

Assume that all of the charges constitute gross income for purposes of chapter 237, HRS, the general excise tax law. The amount of transient accommodations tax visibly passed on and collected is not included in gross income under section 237-24.3(8), HRS, but the amount of general excise tax visibly passed on is included in gross income. Thus, if Paradise, in addition to the \$10.87 transient accommodations tax, adds four per cent of the total charges of \$350, or \$14, to Ms. Mainland's bill and charges a total of \$374.87, Paradise's gross income subject to the general excise tax is \$374.87 minus \$10.88, or \$364. The tax to be paid by Paradise to the Hawaii State Tax Collector is four per cent of \$364, or \$14.56 of general excise tax, plus \$10.87 of transient accommodations tax, for a total of \$25.43.

Example 4. Paradise Hotel rents a room to Ms. Mainland on January 1, 1999, under the American Plan and charges Ms. Mainland \$200.

To compute the transient accommodations tax, Paradise shall deduct the cost of meals from the total price charged Ms. Mainland. If the cost reasonably attributed to meals is \$50, then the cost of the room is \$150.

Paradise visibly passes the general excise tax and the transient accommodations tax on to Ms. Mainland, so that the total charge to Ms. Mainland is \$218.87 comprised of the \$200 charge, \$8 for general excise tax on the \$200, and \$10.87 for transient accommodations tax on the \$150. Paradise is to pay the Hawaii State Tax Collector four per cent of \$208 or \$8.32 of general excise tax, and 7.25 per cent of \$150 or \$10.87 of transient accommodations tax. The total tax payable is \$19.19.

Example 5. Paradise Hotel accepts an advance deposit of \$100 from Ms. Mainland to confirm her room reservation. Ms. Mainland does not show up and forfeits the \$100 deposit. The \$100 is treated as a forfeited deposit and is not subject to the transient accommodations tax because it is excluded from gross rental. The \$100, however, is subject to the general excise tax. [Eff 11/25/88; am 7/18/94; §18-237D-1-02; am and ren JUN 03 2005 1 (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§237-24.3(8), 237D-1)

§18-237D-1-04

§18-237D-1-04 "Occupant", defined. As used in this chapter, "occupant" means an owner of a resort time share vacation plan, or other person occupying the resort time share vacation unit.

Example 1. E, a time share interval owner, has a time interval period of seven days. E, however, did not occupy the resort time share vacation unit but allowed a friend to occupy it for the entire seven days at no cost. E is an occupant, regardless of the fact that E's friend occupied the unit at no cost.

Example 2. F, a time share interval owner, has a time interval period of seven days. F occupies the unit for two days, then allows a friend to occupy it for the other five days at no cost. Both F and F's friend are occupants. [Eff JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§237-24.3(8), 237D-1)

§18-237D-1-05 "Operator", defined. (a) In general. An operator is any owner, proprietor, lessee, sublessee, mortgagee in possession, licensee, or any other person who is engaged in the business of actually furnishing transient accommodations. For the purposes of the tax imposed by this chapter, however, an operator shall be deemed to be synonymous with the person who is or should be licensed and required to pay the general excise tax imposed upon gross income or gross receipts derived from the actual furnishing of transient accommodations.

(b) Application to travel agents. Traditionally, a travel agent does not actually furnish transient accommodations. For the purposes of this chapter; therefore, a travel agent shall not be considered an operator unless the travel agent actually furnishes transient accommodations.

(c) Examples. Subsections (a) and (b) are illustrated as follows:

Example 1. Mr. Paul owns three apartment units and is engaged in the activity of furnishing transient accommodations. As owner and operator, Mr. Paul is liable for the tax imposed by this chapter.

Example 2. The facts are the same as in Example 1, except that Mr. Paul engages XYZ Corporation, a firm engaged in the property management business, to manage and rent out the apartment units. Although the apartments are managed and rented out by XYZ Corporation, as the owner operator, Mr. Paul is liable for the tax imposed by this chapter.

Example 3. Hotel Corporation leases for a 55-year period a 300-unit apartment complex from Land Corporation. Hotel Corporation operates the apartment complex as a "hotel". As the lessee and operator, Hotel

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Corporation is liable for the tax imposed under this chapter, and the general excise tax imposed under chapter 237, HRS, on the gross rental or gross rental proceeds derived from the transient accommodations and apartment rental activities, respectively. As lessor, Land Corporation is subject to the general excise tax imposed under Chapter 237, HRS, on the gross income or gross receipts derived from the activity of leasing the apartment complex to Hotel Corporation. [Eff 11/25/88; §18-237D-1-03; ren JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-1)

§18-237D-1-06(b)

§18-237D-1-06(b) Individuals on a month-to-month lease excluded. A transient does not include an individual renting a room, suite, or the like, on a month-to-month lease, if the individual:

- (1) Does not have another true, fixed, and permanent home and principal establishment;
- (2) Moves from place to place through the use of month-to-month rentals; and
- (3) Establishes a permanent home and principal establishment at each place which is rented on a month-to-month lease.

This provision applies even if the individual terminates a long term rental agreement before the one hundred-eighty days expire.

Example 1. G permanently resides in an apartment. A hurricane damaged G's apartment to such an extent that G could not live there. G rents another apartment on a month-to-month basis until G's apartment is repaired and G can move back in 4 months. The rent paid by G is subject to the transient accommodations tax because the apartment is G's temporary home for that period.

Example 2. A family's home is made unlivable because of a natural disaster. The house lost its roof and the outer wall along one side. The family finds a condominium in a resort area that is available for rent until their home is repaired. The condominium is usually rented to visitors and is a transient accommodation. The rents received are subject to the transient accommodations tax because the condominium is being used by the family temporarily until they can return to their permanent home. [Eff 11/25/88; am 7/18/94; §18-237D-1-04; am and ren JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§237-24.3(8), 237D-1)

§18-237D-1-07 "Transient accommodations", defined.

(a) In general. "Transient accommodations" means the furnishing of a room, apartment, suite, or the like which is customarily occupied for less than one-hundred-eighty consecutive days for each letting by a hotel, apartment hotel, motel, condominium property regime or apartment as defined in chapter 514A, HRS, cooperative apartments, or rooming house that provides living quarters, sleeping, or housekeeping accommodations, or other place in which lodgings are regularly furnished to transients for a consideration.

(b) Applicable presumptions. If the room, apartment, or the like is customarily occupied by transients and the hotel or condominium regularly furnishes such accommodations to transients, the following apply:

- (1) It shall be presumed that accommodations are transient accommodations if the accommodations are let for a period of less than one-hundred-eighty consecutive days; and
- (2) No presumption applies if the accommodations are let for a period of one-hundred-eighty consecutive days or longer.
- (3) See section 18-237D-15-01 for further discussion of the one hundred-eighty day presumption set forth in section 237D-15(b), HRS.

(c) "Customarily", defined. "Customarily" means:

- (1) By virtue of common usage, the hotel room, apartment, suite, and the like is occupied for less than one-hundred-eighty consecutive days, such as the following:
 - (A) Hotel rooms which are customarily rented to guests who stay for short periods of time, such as periods of consecutive days and nights which are generally less than a week; or
 - (B) Condominium apartments which are customarily rented to guests who occupy the apartments for longer periods, such as thirty consecutive days or more.

- (C) There may be situations where a hotel room or a condominium apartment is customarily rented to transients, but also is periodically rented for more than one-hundred-eighty consecutive days. For example, a hotel room or condominium which is customarily rented to tourists for periods averaging thirty days, but at times is rented to a construction company for temporary housing of its employees. This temporary housing may last for one year or more whenever the companies have jobs in the Neighbor Islands and housing is required to be provided. Whether the hotel, condominium, or apartment operator periodically rents the room, apartment, or suite for one-hundred-eighty consecutive days or more shall not change an accommodation from a transient to a non-transient accommodation. For the period in which the hotel or condominium is rented for one-hundred-eighty consecutive days or longer, however, the revenue from the rental is not subject to the transient accommodations tax.
- (2) Example. Paragraph (1) is illustrated as follows:

During the past 5 years, Convenient Apartments has rented its apartments to Canadian tourist families who vacation in Hawaii. The rental period has averaged 30 consecutive days. For a 1 year period, however, Convenient Apartments agrees to rent all of its apartments to ABC Construction Company for construction workers who are in need of housing during construction of a neighboring resort hotel. Based on these facts, Convenient Apartments is not liable for the transient accommodations tax for the

gross rental income received for the 1 year period the accommodations are rented to ABC Construction Company. Following this 1 year period, Convenient Apartments again returns to its practice of renting the apartments for periods ranging from 2 to 179 consecutive days. In this situation, Convenient Apartments is engaged in the businesses of furnishing transient accommodations because the apartments are customarily occupied by transients for less than 180 consecutive days, and the apartments are regularly furnished for a consideration. The apartments are transient accommodations even though for the period of time apartments are rented to ABC Construction Company, the revenue from such rental is not subject to the transient accommodations tax.

(d) "Regularly", defined. "Regularly" means that the accommodation is systematically, usually but not necessarily continuously or exclusively, rented to transients, such as the following:

- (1) Hotels which usually, but not exclusively, furnish rooms to people who only stay for short periods of time; or
- (2) A house or apartment rented for a portion of the year to transients and which is rented for the remainder of each year for more than one hundred-eighty days to residents.
- (3) Example. Paragraphs (1) and (2) are illustrated as follows:

Each year the owner of a house on the North Shore of Oahu rents the house to a tourist family for four months. The rest of the year, the owner rents the house for more than 180 days to Hawaii residents. The fact that the owner rents the house to transients for a portion of the year makes the house a transient accommodation which is

regularly furnished to transients. The transient accommodations tax; therefore, is to be paid for each period the house is rented to transients. There is no transient accommodations tax for the time period the house is rented to Hawaii residents.

(e) Application of the one-hundred-eighty consecutive day rule.

- (1) The one-hundred-eighty day rule shall be applied in determining the following:
 - (A) Whether the room, apartment, suite, or similar facility falls within the definition of a transient accommodation; and
 - (B) Whether the revenue derived from the room, apartment, suite, or similar facility is subject to the tax.
- (2) If it is determined that the facility falls within the definition of a transient accommodation, then the next determination is whether or not the gross rental proceeds results from the rental of the facility for less than one-hundred-eighty consecutive days. The law creates a presumption that if a facility is let for less than one-hundred-eighty consecutive days, the accommodation is furnished for a transient purpose. If the taxpayer is able to prove to the director's satisfaction that the facility is not let for a transient purpose, there shall be no tax imposed. If the facility is let for one-hundred-eighty consecutive days or more, there is no presumption and the burden of proof remains with the taxpayer to prove that the facility is not let for a transient purpose. See section 18-237D-15-01 for further discussion.

(f) Lease of six months or longer broken before

one hundred-eighty days have expired.

- (1) In general. Where a tenant breaches a lease of one hundred-eighty days or longer by moving out before one hundred-eighty days have expired, the owner may not be deemed to be the operator of a transient accommodation insofar as this particular facility is concerned.
- (2) Example. Paragraph (1) is illustrated as follows:

Landlord enters into a lease of 6 months or longer with Tenant. Tenant breaches the lease by moving out after living in the apartment for 60 days. Landlord is not deemed to be an operator of transient accommodations regarding this particular apartment because the lease is for a period in excess of 180 consecutive days.

- (3) Tax avoidance scheme. If the department finds that a landlord is continuously entering into leases of six months or longer and the tenants are continuously breaking these leases after one or two months, the burden is upon the landlord to show that the operation is not a tax avoidance scheme and subject to the transient accommodations tax.

(g) Application to time sharing plans. For the period beginning on January 1, 1999, and thereafter, the occupant of a resort time share vacation unit shall be subject to the transient accommodations tax under section 237D-2(c), HRS. Every plan manager shall be liable for and pay the transient accommodations tax as provided under section 237D-2(d), HRS; provided that if the unit is rented the transient accommodations tax under section 237D-2(c), HRS, is not applicable and the operator of the transient accommodations shall be liable for the transient accommodations tax as provided in section 237D-2(b), HRS.

Example. A, a time share interval owner, has use of a time share unit in

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Waikiki for two weeks at the beginning of August. In 1999, A occupies the unit for the two weeks in August. The plan manager is liable for the transient accommodations tax. In 2000, A exchanges the occupancy of the unit for the two weeks in August for occupancy of a time share unit in California. For 2000, A is not subject to the transient accommodations tax. The plan manager, however, shall be liable for the transient accommodations tax under section 237D-2(d), HRS, if the unit is occupied. The plan manager shall be liable for the transient accommodations tax under section 237D-2(b) if the unit is rented out by the plan manager.

In 2001, A rents the time share unit during the two weeks in August to Mr. Tourist for a consideration. In 2001, the time share unit is being furnished as a transient accommodation and the plan manager is liable for the transient accommodations tax for the two weeks under section 237D-2(d), HRS. A is not liable for the transient accommodations tax.

(h) Application of the transient accommodations tax to gross income received pursuant to a long-term rental agreement. The transient accommodations tax does not apply to transient accommodations that are occupied by a party pursuant to a long-term rental agreement (e.g., over 180 consecutive days) and used by its employees as an integral part of conducting its business operations. A party entering into a long-term rental agreement with an operator is not a "transient" under section 18-237D-1-06(a), because the contracting party is not occupying the premises for a "short and temporary period", but has agreed to rent the accommodations for an extended period. The fact that a contracting party allows its employees to occupy the hotel rooms or apartments for a shorter period of time is irrelevant because the contracting party is considered the occupant of the accommodations under the long-term rental agreement. In addition, transient accommodations that are occupied by a party pursuant to

a long-term rental agreement and used by its employees as an integral part of conducting its business operations are not being furnished for a transient purpose.

Example 1. An airline enters into a one-year contract with a hotel operator to rent several rooms for use by its crew members who regularly lay over in Hawaii. The transient accommodations tax does not apply to the gross income received by the hotel operator because the hotel rooms are occupied by the airline for an extended period of time and used by the airline's employees as an integral part of the airline's flight operations.

Example 2. A construction company enters into a nine-month contract with the owner of an apartment complex to rent several units to house its employees at a job site. The transient accommodations tax does not apply to the gross income received by the owner of the apartment complex because the apartments are occupied by the construction company for an extended period of time and used by the construction company's employees as an integral part of conducting the company's construction operations at a particular job site.

Example 3. A corporation enters into a one-year contract with a hotel operator to rent several rooms for use by its employees as part of its bonus/incentive plan. The transient accommodations tax does not apply to the gross income received by the hotel operator because the hotel rooms are occupied by the corporation for an extended period of time and used by the corporation's employees as an integral part of the corporation's bonus/incentive plan.

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Example 4. A tour wholesaler enters into a one-year contract with a hotel operator to rent a block of rooms to resell to its customers. The transient accommodations tax applies to the gross income received by the hotel operator despite the fact that the hotel rooms are occupied by the tour wholesaler for an extended period. The accommodations are being furnished for a transient purpose because the rooms are being resold by the tour wholesaler to its customers who will occupy the hotel rooms for a short and temporary period, rather than occupied by the tour wholesaler's employees for some purpose integral to its business operations. [Eff 11/25/88; am 7/18/94; §18-237D-1-05; am and ren JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§237D-1, 237D-15)

§18-237D-2-01 Imposition and rates. For the purposes of this chapter, there shall be levied and assessed and collected each month a tax of:

- (1) 7.25 per cent on the gross rental or gross rental proceeds derived from furnishing transient accommodations during the period January 1, 1999, and thereafter; or
- (2) 7.25 per cent on the unit's "fair market rental value" for the period beginning on January 1, 1999, and thereafter. The tax shall be assessed and collected each month on the occupant of a resort time share vacation unit. Every time share plan manager shall be liable for and pay to the department the transient accommodations tax. If a time share unit is rented, the plan manager shall be liable for the transient accommodations tax on the unit's "fair market rental value" under section 237D-2(c) and (d), HRS.

Example. ABC Hotel, engaged in the activity of furnishing transient accommodations, charges and collects \$500 from a transient (\$100 per night). The transient checked in on December 30, 1998, and checked out on January 4, 1999. The transient accommodations tax is imposed at six per cent for accommodations on the nights of December 30 and 31, and it is imposed at 7.25 per cent for accommodations on the nights of January 1, 2, and 3. The total tax due is six per cent of \$200 (\$12) plus 7.25 per cent of \$300 (\$21.75) for a total of \$33.75 in transient accommodations tax. [Eff 11/25/88; am 7/18/94; am JUN 03 2005 1 (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-2)]

§18-237D-3-01 Exemptions. (a) Exempted from this chapter are the following:

- (1) Health care facilities including hospitals, freestanding surgical outpatient facilities, skilled nursing facilities, intermediate care facilities, adult residential care homes, adult foster care homes, special treatment facilities and programs, home health agencies, freestanding birthing facilities, adult day health centers, and independent group residences.
- (2) School dormitories of a public or private educational institution providing education in grades kindergarten through twelve, or of any institution of higher education.
- (3) Lodging provided by nonprofit corporations or associations for religious, charitable, or educational purposes; provided that this exemption shall apply only to the activities of the religious, charitable, or educational corporation or association as such and not to any rental or gross rental the primary purpose of which is to produce income even if the income is used for or in furtherance of the exempt activities of such religious, charitable, or educational corporation or association.
- (4) Living accommodations for persons in the military on permanent duty assignment to Hawaii, including the furnishing of transient accommodations to those military personnel who receive temporary lodging allowances while seeking accommodations in Hawaii or while awaiting reassignment to new duty stations outside the State. This exemption does not apply to transient accommodations provided to persons in the military on permanent duty assignment in the State and who have temporarily departed from their permanent homes and principal establishments elsewhere in this State.

Example. A captain in the United States Army rents a condominium unit in Waikiki for one month while looking for permanent housing in Hawaii. The gross income received by the hotel operator is not subject to the transient accommodations tax because the captain is seeking living accommodations in Hawaii.

- (5) Low-income renters receiving rental subsistence from the state or federal governments and whose rental periods are for durations shorter than sixty days.
- (6) Operators of transient accommodations who furnish accommodations to full-time students enrolled in an institution offering post-secondary education. This exemption shall also apply to operators who furnish transient accommodations to students during summer employment.

Example. A pineapple company provides lodging to employees who travel to Lanai to work in the pineapple fields. During the summer, the pineapple company employs high school and college students to work in the fields on Lanai and provides lodging to the students during their period of summer employment. Although the lodging provided by the pineapple company is for a period of less than 180 days, the pineapple company is not subject to the transient accommodations tax for such lodging because operators who furnish transient accommodations to students during summer employment are exempt under the law.

- (7) Accommodations furnished without charge such

as, but not limited to, complimentary accommodations, accommodations furnished to contract personnel such as physicians, golf or tennis professionals, swimming and dancing instructors, and other personnel to whom no salary is paid or to employees who receive room and board as part of their salary or compensation.

(8) Accommodations furnished to foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes.

Example. The Consul General of Australia is in Hawaii for official business and rents a hotel room in Waikiki for one week. The Consul General holds a card issued by the United States Department of State granting an exemption from state hotel taxes. The gross income received by the hotel operator will not be subject to the transient accommodations tax.

(b) Accommodations furnished to transients who present cards or certificates stating that the holder is exempted from state hotel room taxes are nevertheless transient accommodations and their operators are subject to tax except as provided in chapter 237D, HRS, and these rules.

(c) There is no transient accommodations tax exemption for gross income received by an operator for the rental of transient accommodations to a non-military employee of the federal government or an employee of a state government.

Example. An employee of the United States Department of the Interior is in Hawaii for official business and rents a

hotel room in Waikiki for one week. The gross income received by the hotel operator is subject to the transient accommodations tax because there is no transient accommodations tax exemption for renting transient accommodations to a non-military employee of the federal government.

(d) The director shall determine the sufficiency of the proof necessary for the application of the exemptions set forth in subsection (a). The necessary proof includes the following:

- (1) To qualify for an exemption under subsection (a)(4), the operator shall require that the person in the military on permanent duty assignment present the following at the time of check-in:
 - (A) An identification card with a serial number which verifies the person's military status; and
 - (B) A copy of the orders prepared by the military organization verifying the period for which the temporary lodging allowance is received.The operator shall maintain copies of documents supporting any claim for an exemption under this paragraph for three years.
- (2) To qualify for the full-time student enrollment exemption of subsection (a)(6), the operator shall require the student to submit proof signed by the registrar or other authorized agent of the post-secondary institution certifying the full-time enrollment of the student for each school semester. For the purpose of this paragraph, full-time enrollment is defined as follows:
 - (A) For an undergraduate student:
 - (i) Twelve credits or more per semester; or
 - (ii) Six credits or more per summer term.
 - (B) For a graduate student:
 - (i) Eight credits or more per semester

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- when the student is enrolled in two or more graduate level courses;
- (ii) Nine credits or more per semester when the graduate student is enrolled in one graduate level course;
 - (iii) Twelve credits or more, when the student is enrolled in no graduate level courses; or
 - (iv) Six credits or more per summer term. [Eff 11/25/88;
- am JUN 03 2005] (Auth:
HRS §§231-3(9), 237D-16(b)) (Imp:
HRS §§237D-3, 321-11(10))

§18-237D-4-01(a)

§18-237D-4-01(a) In general. Each operator or plan manager, before engaging or continuing in the activity of furnishing transient accommodations or in business as a resort time share vacation plan within the State, shall register the name and address of each place of business within the State subject to this chapter with the director.

The operator or plan manager shall indicate the type of ownership on the registration. If the transient accommodation is jointly owned or furnished by a husband and wife, the husband and wife may jointly file one individual registration.

The registration shall include the name and address of the operator or plan manager and of each place of business subject to this chapter.

(b) The operator or plan manager shall pay a one-time registration fee of \$5 if the operator or plan manager has one to five transient accommodation units, \$15 if the operator or plan manager has six or more transient accommodation units, and \$15 for each resort time share vacation plan within the State. The fee shall be paid to any of the taxation district offices where the transient accommodations are located. There shall be no additional charge if the operator or plan manager later adds more units to the operator's or plan manager's registration in accordance with section 18-237D-4-05, nor shall there be a refund if the number of units is reduced. Upon receipt of the required payment, the director shall issue a certificate of registration.

(c) Upon written request by an operator or plan manager, the department shall cancel a registration certificate. The cancellation shall be without any refund of the registration fee paid. [Eff 11/25/88; am 7/18/94; am JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-01(e)

§18-237D-4-01(e) Time for registration. The operator or plan manager shall register as required by this section prior to commencing the activity of furnishing transient accommodations or in business as a resort time share vacation plan. [Eff 11/25/88; am 7/18/94; am JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-02(a)

§18-237D-4-02(a) In general. Each operator or plan manager shall at all times conspicuously display the certificate of registration or a notice as set forth in subsection (b) at each place for which it is issued.

(b) Alternative method of display for more than one transient accommodation or in business as a resort time share vacation plan. Where the operator or plan manager operates more than one transient accommodation or more than one resort time share vacation plan, the director shall issue one certificate of registration. The operator or plan manager may post a notice in each room, apartment, suite, or the like either notifying the tenant or occupant where the certificate may be inspected or referring the tenant or occupant to the department." [Eff 11/25/88; am 7/18/94; am JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-03

§18-237D-4-03 Nontransferability of certificate of registration. The certificate of registration shall not be transferable. The certificate shall be valid only for the operator or plan manager in whose name the certificate has been issued and for the transaction of business only at the place designated. [Eff 11/25/88; am JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-04

§18-237D-4-04 Cancellation of registration by operator or plan manager ceasing to do business; change of ownership. Any operator or plan manager which goes out of business or otherwise ceases to engage in the conduct of transient accommodations activity or in business as a resort time share vacation plan for which a certificate of registration is issued or which transfers ownership of all of its transient accommodations or resort time share vacation plan shall notify the taxation district office in which the operator or plan manager is registered by canceling the registration on a form prescribed by the department not more than ten days after the transfer of ownership or the activity has ceased. [Eff 11/25/88;
am JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b))
(Imp: HRS §237D-4)

§18-237D-6-01(a)

§18-237D-6-01(a) In general. On or before the last day of each calendar month, every operator or plan manager taxable under this chapter during the preceding calendar month shall file a sworn return with the director in a form prescribed by the director unless the operator or plan manager has obtained permission to make tax returns and payments on a quarterly or semiannual basis.

(b) How to report gross income or gross proceeds. The operator or plan manager shall be required to file monthly, quarterly, or semiannual returns, and annual returns with the department in the same manner and at the same time as the returns are filed in accordance with chapter 237, HRS, except as otherwise provided in this chapter. [Eff 11/25/88; am JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§237-30, 237D-6)

§18-237D-6-01(d)

§18-237D-6-01(d) Revocation of permission to file quarterly or semiannual returns. At any time, the director may revoke the permission given to file a return and make payments thereon on a quarterly or semiannual basis during the calendar year if:

- (1) An operator or plan manager becomes delinquent in the filing of the tax return or the payment of taxes due thereon;
- (2) The director determines that the operator or plan manager plans to depart quickly from the State or is disposing of or concealing assets or doing any other act tending to prejudice or jeopardize the proper administration of this chapter, including assessment or collection of a deficiency. In addition to revoking the permission granted, the director may immediately assess, insofar as not previously assessed, the taxes imposed by this chapter; or
- (3) The operator's or plan manager's total tax liability for the calendar year exceeds \$2,000 for quarterly returns or \$1,000 for semiannual returns.

Upon revocation, the operator or plan manager shall file a tax return of the installment of the tax due on or before the last day of the calendar month following the month, quarter, or semiannual period, as the case may be, in which the liability arose and each month thereafter. The operator or plan manager shall transmit the return with a remittance for the amount of the tax, to the appropriate taxation district office in accordance with subsection (c). [Eff 11/25/88; am JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§237-30, 237D-6)

§18-237D-6-02

§18-237D-6-02 Remittances. The provisions of section 237-31, HRS, shall apply. All remittance of taxes imposed by this chapter shall be made by money, bank draft, check, cashier's check, money order, or certificate of deposit payable to the Hawaii State Tax Collector. The remittance, together with the tax return, shall be sent to the appropriate taxation district office where the transient accommodations or resort time share vacation plan upon which the tax is imposed is located. If the operator operates transient accommodations or is in business as a resort time share vacation plan in more than one taxation district, the remittance and the tax return may be sent to the taxation district in which such accommodations or resort time share vacation plans are registered or to the first taxation district office. The operator or plan manager may pay the tax upon transient accommodations in more than one district with one check; provided that the operator or plan manager must provide a breakdown of the tax payments by the taxation district in which the transient accommodations or resort time share vacation plans are situated upon which the tax is imposed. [Eff 11/25/88; am JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§237-30, 237D-6)

§18-237D-7-01(a)

§18-237D-7-01(a) Requirement of filing annual return. In addition to the monthly, quarterly, or semiannual return, every operator of transient accommodations or plan manager shall file an annual return on or before the twentieth day of the fourth month following the close of the taxable year with the taxation district officer where the transient accommodation or resort time share vacation plan is located and registered or with the office of the first taxation district. If the operator or plan manager operates transient accommodations or resort time share vacation plans located in more than one taxation district, the operator or plan manager may file an annual return with the taxation district in which such accommodations are registered or with the first taxation district. The annual return shall summarize the operator's or plan manager's liability under this chapter for the year.

(b) Tax year for purposes of the tax. With the approval of the department, operators or plan managers who keep their books on other than a calendar year basis may file their annual tax returns and pay taxes for the year covering the operator's or plan manager's accounting period based upon their method of keeping books in the same manner as returns are filed pursuant to chapter 237, HRS. [Eff 11/25/88; am 7/18/94; am JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-7)

§18-237D-7-01(d)

§18-237D-7-01(d) Extension of time to file. The department may extend the time for making the annual tax return on the application of any taxpayer. The department shall grant reasonable additional time within which to make the return as the department may deem advisable for good cause shown.

- (1) The extension shall be granted only if all required monthly, quarterly, or semiannual tax returns have been filed.
- (2) In making an application for extension, the operator or plan manager shall file an application for extension on a form prescribed by the department with the appropriate taxation district office where the transient accommodation or resort time share vacation plan is located or with the office of the first taxation district on or before the due date of the annual tax return specifying the reason for the delay. If the operator or plan manager operates transient accommodations or resort time share vacation plans located in more than one taxation district, the operator or plan manager may file an application for extension with the taxation district in which such accommodations or resort time share vacation plans are registered or with the first taxation district. On or before the due date prescribed by statute, there shall be paid through monthly, quarterly, or semiannual tax payments or a payment accompanying the application for an extension an amount equal to the estimated tax due for the taxable year but in any case not less than ninety per cent of the tax for the taxable year. If payment accompanies the application, the amount shall be shown on the application.
- (3) The annual tax return with payment of any tax to the extent not already paid

§18-237D-7-01(d)

and a duplicate of the application shall be filed during the time period specified for the extension.

- (4) The department will consider three-month extensions of time for filing the annual tax return. The operator or plan manager must request and receive approval for the first three-month extension of time to file the annual return on forms prescribed by the department. If a second extension is needed, the operator or plan manager must apply for and receive approval of the subsequent extension. In no event will the total extension period granted exceed six months from the original date of the return.

- (5) An application for extension shall be signed by any person who may sign the annual return, or by a duly licensed attorney or certified public accountant on behalf of the attorney's or accountant's client. [Eff 11/25/88; am 7/18/94; am JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b))
(Imp: HRS §237D-7)

§18-237D-7-02(b)

§18-237D-7-02(b) If there is a change of ownership or complete transfer of transient accommodation activity, or if an operator or plan manager goes out of business or otherwise ceases to engage in the conduct of transient accommodations activity, the operator or plan manager shall notify the director of the change, transfer, or cessation of business not more than ten days after the change, transfer, or cessation occurs in accordance with section 18-237D-4-04.

(c) The operator or plan manager shall file a monthly return on or before the last day of the calendar month following the month in which the change of ownership, transfer of transient accommodation activity, or cessation of business took place.

(d) If the operator or plan manager has been granted permission to make quarterly or semiannual tax returns instead of monthly returns, the operator or plan manager shall file a return of the installment of the tax due for the applicable quarterly or semiannual period on or before the last day of the calendar month following the month in which the change of ownership, transfer of transient accommodation activity, or cessation of business took place.

(e) The operator or plan manager shall prepare and submit an annual tax return summarizing the months of the year engaged in the transient accommodations activity on or before the twentieth day of the fourth month following the month in which the change of ownership, transfer of transient accommodations activity, or cessation of business took place.

(f) An operator or plan manager filing any return required by this section may apply for an extension as set forth in section 18-237D-7-01(d). [Eff 11/25/88; am 7/18/94; am JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§ 237-30, 237D-7)

§18-237D-8-01(a)

§18-237D-8-01(a) Time for filing returns. Except as otherwise provided in section 18-237D-7-02, the times for the filing of monthly, quarterly, or semiannual returns are as follows:

- (1) For monthly returns, on or before the last day of the calendar month following the month in which taxes accrued. The return shall report the gross rental or gross rental proceeds derived from the immediately previous month.
- (2) For quarterly returns, on or before the last day of the month after the close of each quarter. For calendar year operators or plan managers, the returns shall be due on or before April 30, July 31, October 31 and January 31.
- (3) For semiannual returns, on or before the last day of the month after the close of each six-month period. For calendar year operators or plan managers, the returns shall be due on or before July 31 and January 31. [Eff 11/25/88; am JUN 03 2005 1 (Auth: HRS §§231-3(9), 237D-16(b), 237D-8) (Imp: HRS §§237-30, 237D-8)

§18-237D-8-01(c)

§18-237D-8-01(c) Where to obtain the filing forms. The operator or plan manager shall obtain all forms for filing returns from the department upon registration of the transient accommodations or resort time share vacation plan. [Eff 11/25/88; am JUN 03 2005]
] (Auth: HRS §§231-3(9), 237D-16(b), 237D-8) (Imp:
HRS §§237-30, 237D-8)

§18-237D-9-01(a)

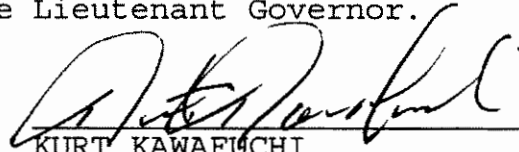
§18-237D-9-01(a) In general. If any operator or plan manager fails to make a return as required by this chapter, the director shall proceed to assess the tax due based upon the best information available and impose any applicable penalty and interest upon the operator or plan manager. [Eff 11/25/88; am 7/18/94; am JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§235-111, 237D-9)

§18-237D-12-01(a)

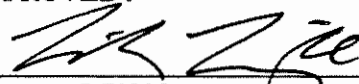
§18-237D-12-01(a) In general. Every operator and plan manager shall keep suitable records of gross rental and gross rental proceeds, or fair market rental value, in the English language for a three-year period and such other books, records of account, invoices, and copies of military orders, school registration statements, or other verifying documents, as may be required by the department. The operator or plan manager shall also make such books, records of account, and invoices as may be required by the department available for inspection by the department or the Multistate Tax Commission pursuant to chapter 255, HRS, or any authorized representative of either. [Eff 11/25/88; am JUN 03 2005] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§231-34, 237D-12)

Amendments to Chapter 18-237D, Hawaii Administrative Rules, on the summary page, dated October 29, 2004, were adopted on October 29, 2004, after public notice was published in the Hawaii Star Bulletin, The Garden Island, The Maui News, Hawaii Tribune-Herald, and West Hawaii Today on November 28, 2003.

These amendments shall take effect ten days after filing with the office of the Lieutenant Governor.

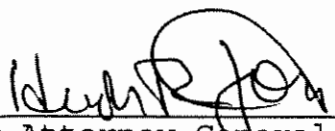

KURT KAWAFUCHI
Director of Taxation

APPROVED:


LINDA LINGLE
Governor
State of Hawaii

MAY 23 2005

APPROVED AS TO FORM:


Deputy Attorney General